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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,279	02/02/2000	George e. Carter	00P7437US	7302
7590	03/08/2004		EXAMINER	
Siemens Corporation Intellectual Property Department 186 Wood Avenue South Iselin, NJ 08830			NAJJAR, SALEH	
			ART UNIT	PAPER NUMBER
			2157	
			DATE MAILED: 03/08/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/497,279	CARTER, GEORGE E. <i>SL</i>
Examiner	Art Unit	
Saleh Najjar	2157	

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 December 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-27 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

13)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a)  The translation of the foreign language provisional application has been received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6)  Other: \_\_\_\_\_

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1. This action is responsive to the amendment filed on December 18, 2003. Claims 1-5, 14-17, 24, and 26 were amended. Claims 1-27 are pending. Claims 1-27 represent a method, program and apparatus directed toward background processing deferment for computer telephony.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4, 7, 13-16, and 24-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al., U.S. Patent No. 6,145,083.

Shaffer teaches the invention as claimed including a method and system for resolving conflicts between incoming calls and a screen saver program (see abstract).

As to claim 1, Shaffer teaches a computer implemented method of processing a computer telephony call, comprising:

deferring execution of at least one background process; and processing a computer telephony call (see col. 5-6, Shaffer teaches deferring execution of a screen saver program when an incoming call occurs).

As to claim 2, Shaffer teaches the method of claim 1, wherein deferring execution of at least one background process is performed when a computer telephony application is executed (see col. 6).

As to claim 3, Shaffer teaches the method of claim 1, wherein deferring execution of at least one background process is performed before making or receiving a computer telephony call (see col. 6).

As to claim 4, Shaffer teaches the method of claim 1, wherein deferring execution of at least one background process is performed during the computer telephony call (see col. 6).

As to claim 7, Shaffer teaches the method of claim 1, further comprising enabling execution of at least one background process if there have not been any computer telephony calls for a predetermined time (see col. 6-7).

Claims 3-16, and 24-27 do not teach or define any new limitation above claims 1-4, 7 and therefore are rejected for similar reasons.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 5-6, 8-9, 10-12, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al., U.S. Patent No. 6,145,083, further in view of Christensen et al., U.S. Patent No. 6,360,336 (referred to hereafter as Chris).

Shaffer teaches the invention substantially as claimed including a method and system for resolving conflicts between incoming calls and a screen saver program (see abstract).

As to claims 5-6, Shaffer teaches the method of claim 1.

Shaffer fails to teach the limitation wherein deferring execution of at least one background process includes accessing an inhibit list that lists background processes; and deferring execution of the at least one background process on the inhibit list which includes information regarding deferring execution of each background process on the inhibit list.

However, Chris teaches a computer continuous diagnosis and maintenance using a screen saver program (see abstract). Chris teaches inhibit list that lists background processes; and deferring execution of the background processes on the inhibit list (see col. 1-2, Chris discloses that a number of diagnosis and maintenance programs are run as part of a screen saver program on a client, the programs include critical and non-critical programs, non-critical programs are inhibited instantly when the screen saver is deactivated).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Shaffer in view of Chris so that critical or non-critical programs are specified in a screen saver module. One would be motivated to do so to specify programs that must complete before the screen saver is deactivated.

Claims 8-9 do not teach or define any new limitations above claims 5-6 and therefore are rejected for similar reasons.

As to claim 10-12, Shaffer teaches the method of claim 1 above.

Shaffer fails to teach the limitation of generating a log of at least one background process that execute during computer telephony calls.

However, Chris teaches a computer continuous diagnosis and maintenance using a screen saver program (see abstract). Chris teaches generating a log of background processes that execute during computer telephony calls (see col. 1-2, Chris discloses that a number of diagnosis and maintenance programs are run as part of a screen saver program on a client, the programs include critical and non-critical programs, non-critical programs are inhibited instantly when the screen saver is deactivated).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Shaffer in view of Chris so that critical or non-critical programs are specified in a screen saver module. One would be motivated to do so to specify programs that must complete before the screen saver is deactivated.

Claims 17-23 do not teach or define any new limitations above claims 5-6, 8-9, 10-12 and therefore are rejected for similar reasons.

6. Applicant's arguments filed December 18, 2003 have been fully considered but they are not persuasive. In the remarks, the applicant argues in substance that the screen saver of Shafer is not a background process defined in the specification as not under the immediate interactive control of the user.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a process that is not under immediate control of the user) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The screen saver program of Shaffer reads on the claimed limitation of a background process since even if the user is actively using the computer, the screen saver program is running in the background checking for activities or inactivity's.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is

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filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saleh Najjar whose telephone number is (703) 308-7613. The examiner can normally be reached on Monday-Friday from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Ario Etienne*, can be reached on (703) 308-7562. The fax phone number for this Group is (703) 308-9052.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600. The fax number for the After-Final correspondence/amendment is (703) 746-7238. The fax number for official correspondence/amendment is (703) 746-7239. The fax number for Non-official draft correspondence/amendment is (703) 746-7240.



Saleh Najjar

Primary Examiner / Art Unit 2157